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No. 97-135

Supreme Court, U.S.
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In The Supreme Court Of The United States

OCTOBER TERM 1996

OLD VAIL PARTNERS,

Petitioner,

v.

COUNTY OF RIVERSIDE; CITY OF TEMECULA,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals For The Ninth Circuit

BRIEF OF RESPONDENT COUNTY OF RIVERSIDE IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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RESTATEMENT OF QUESTION PRESENTED

Whether the Court of Appeals erred in ordering abstention under ***Younger v. Harris***, 401 U.S. 37, 91 S. Ct. 746, 27 L. Ed. 2d 669 (1971), rather than under ***Railroad Comm'n of Texas v. Pullman***, 312 U.S. 496, 61 S. Ct. 643, 85 L. Ed. 971 (1941), where petitioner is litigating its federal claim in a pending state court proceeding, and the proceeding implicates important state interests.

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INTRODUCTION

The petition for writ of certiorari filed by Old Vail Partners ("Old Vail") misconstrues the abstention doctrines and how they apply to this case.

As set forth below, ***Younger*** abstention is proper where a pending state proceeding implicates important state interests, and the proceeding affords the litigant an adequate opportunity to raise the federal constitutional issue. Those factors are present here -- a point that Old Vail appears to concede. Accordingly, Old Vail has failed to show that the Ninth Circuit Court of Appeals erred in ordering ***Younger*** abstention.

Pullman abstention only arises where an unsettled question of state law may render adjudication of the constitutional issue unnecessary. For example, if a state statute arguably would be unconstitutional if interpreted one way, but constitutional if interpreted another way, ***Pullman*** abstention may be ordered until the statute is construed in a state proceeding. Here, Old Vail has not pointed to any unsettled issue of state law that would bring ***Pullman*** into play.

As a result, Old Vail's contention that the Ninth Circuit has muddled the abstention doctrines and is applying them disparately to similarly-situated litigants has no merit. The unpublished memorandum decision ordering ***Younger*** abstention simply means that Old Vail will continue to pursue its constitutional claim in state court -- a forum it voluntarily chose -- and will not be given a "second bite at the apple" in district court.

For these reasons, respondent County of Riverside (the "County") respectfully submits that Old Vail's petition should be denied.

STATEMENT OF THE CASE

Old Vail formerly owned a parcel of real property (the "Property") within the County. Before Old Vail bought the Property, the County created Assessment District No. 159 ("AD No. 159") under the Municipal Improvement Act of 1913, California Streets & Highways Code §§ 10000 *et seq.* (the "1913 Act"). The Property falls within the boundaries of AD No. 159.

The 1913 Act empowers local governmental entities in California to form assessment districts to finance public

improvements within the boundaries of such districts. A lien is placed on each property within the assessment district to secure payment for the improvements financed. Initially the lien may be paid in cash and fully satisfied, although as a practical matter few property owners choose to do so. Rather, bonds are issued to finance the amount needed to pay for the improvements. The lien amount against each property is collected over time through assessment installments. Proceeds from the assessment installments are used to pay debt service on the bonds.

Under the 1913 Act, before an assessment can be levied, the assessment engineer must calculate the direct and special benefit to each property within the assessment district. This enables the assessment engineer to divide the cost of the improvements financed in proper proportion among the various properties. Old Vail alleges that in AD No. 159 the County assessed the Property based on contemplated commercial zoning. In other words, Old Vail alleges that its proportionate share of the assessment was based on the Property ultimately being put to commercial use.

On December 1, 1989, respondent City of Temecula (the "City") annexed the land located within AD No. 159, including the Property. On November 9, 1993, the City

adopted its general plan, which shows the Property to be in an area of "professional office" designation. Old Vail alleges that by designating the Property as "professional office," the City down-zoned the Property from the "commercial" zoning that the County had contemplated. Old Vail alleges that this rendered its assessment lien excessive by some $600,000.

On August 3, 1994, Old Vail filed a complaint against the County and the City in the United States District Court, Central District of California. That same day Old Vail also filed a complaint in California state court. Both complaints alleged, among others, a takings claim under the Fifth Amendment of the United States Constitution and 42 U.S.C. §§ 1983 and 1985.

The County filed a motion to dismiss Old Vail's district court complaint under Fed. R. Civ. P. 12(b)(1) and 12(b)(6), arguing that the district court lacked subject matter jurisdiction under the Tax Injunction Act of 1937, 28 U.S.C. § 1341, or alternatively that Old Vail had failed to state a claim upon which relief can be granted. The City joined in this motion. The district court issued a written decision granting the motion and dismissing the action without prejudice to Old Vail going forward in state court. The district court subsequently denied a

motion by Old Vail for reconsideration. Old Vail timely filed a notice of appeal.

Meanwhile, Old Vail continued to pursue its state court action, including the takings claim. After numerous hearings and extensive briefing addressed to the merits of Old Vail's takings claim and its state law theories of relief, the state court entered a final judgment dismissing the action on the grounds that Old Vail failed to allege facts sufficient to constitute a cause of action -- the California equivalent of dismissal under Fed. R. Civ. P. 12(b)(6). Old Vail filed a notice of appeal. The appeal has been fully briefed and is awaiting oral argument before the California Court of Appeal.

On February 3, 1997, Old Vail's appeal of the district court decision came on for oral argument before the Ninth Circuit Court of Appeals. On February 10, 1997, the Court of Appeals issued a memorandum decision vacating the district court's decision and remanding the case for dismissal under ***Younger***. Thereafter Old Vail filed the pending petition for writ of certiorari.

REASONS WHY A WRIT SHOULD BE DENIED

I. The Court Of Appeals Correctly Ordered Younger Abstention Because The Case Implicates Important State Interests And Old Vail Has An Adequate Opportunity To Litigate Its Constitutional Claim In State Court.

The Court has said that there are two primary types of abstention: ***Pullman*** abstention and ***Younger*** abstention. Where the former involves unsettled issues of state law, the latter involves

> considerations of comity and federalism, both as they relate to the State's interest in pursuing an ongoing state proceeding, and as they involve the ability of the state courts to consider federal constitutional claims in that context.

Ohio Bureau of Employment Services v. Hodory, 431 U.S. 471, 477, 97 S. Ct. 1898, 1902-03, 52 L. Ed. 2d 513 (1977).

In ***Younger***, one of the plaintiffs was being prosecuted under a California statute, and he filed suit in district court to have that statute declared unconstitutional. 401 U.S. at 38-39, 91 S. Ct. 747-48. The Court held that relief was barred because of a policy against federal intervention in state criminal proceedings. In discussing this

policy the Court used the term "Our Federalism," and spoke of comity and a reluctance to interfere with legitimate state activities. 401 U.S. at 43-45, 91 S. Ct. at 750-51.

In subsequent decisions the Court extended the ***Younger*** doctrine into the civil arena. In ***Middlesex County Ethics Comm. v. Garden State Bar Ass'n***, 457 U.S. 423, 432, 102 S. Ct. 2515, 2521, 73 L. Ed. 2d 116 (1982), the Court stated:

> The policies underlying *Younger* are fully applicable to noncriminal judicial proceedings when important state interests are involved.

In the context of non-criminal proceedings, the Court said that three factors should be considered: (1) whether there is a pending state proceeding; (2) whether the proceeding implicates important state interests; and (3) whether there is an adequate opportunity in the state proceeding to raise constitutional issues. *Id.*

In this case the Court of Appeals correctly concluded that all three factors exist. There is a pending state court proceeding. The proceeding implicates important state interests; the memorandum decision by the Court of Appeals referred to land use planning as such an interest. The case

implicates other important state interests, including a state-sanctioned mechanism for building public improvements, and bonds issued by the County to finance those improvements. Finally, Old Vail has had an adequate opportunity to raise its constitutional claim in the state proceeding, and in fact asserted the identical takings claim as in the district court and pursued that claim to the point of a judgment on the merits.

Indeed, Old Vail concedes that each of the ***Younger*** factors is present. Old Vail acknowledges that it filed suit in state court on the same day it filed in district court. *Petition* at 5-6. Old Vail allows that the state court proceeding "unequivocally touches and concerns a sensitive area of social policy" -- *i.e.*, an important state interest. *Id.* at 22. Finally, Old Vail admits that it has had the opportunity to assert its takings claim in state court and has in fact done so. *Id.* at 5-6.

Because Old Vail concedes that the ***Younger*** factors are present, Old Vail has failed to show that the Court of Appeals erred in ordering ***Younger*** abstention.

II. Pullman Abstention Would Not Be Proper Because There Is No Unsettled Issue Of State Law.

In its petition, Old Vail fails properly to analyze the nature of ***Pullman*** abstention and how that doctrine fits with the facts here. ***Pullman*** involved a constitutional challenge in district court to an order by the Texas Railroad Commission. 312 U.S. at 497-98, 61 S. Ct. at 644. A question arose in the case as to whether the Railroad Commission's order was within the powers granted under Texas law. 312 U.S. at 498-99, 61 S. Ct. at 644.

In the course of its decision the district court made a determination about Texas law -- which the Court characterized as a "forecast." 312 U.S. at 499, 61 S. Ct. at 645. The Court held that rather than make such a forecast, the district court should abstain until the state law issue could be decided in state court. 312 U.S. at 501-02, 61 S. Ct. at 645-46. If the state court determined that the Railroad Commission lacked the power to enter the challenged order, the constitutional issue would never arise. *Id.* In sum, ***Pullman*** stands for the proposition that where an unsettled question of state law may be resolved in a state proceeding so as to render unnecessary the constitutional issue, the district

court should abstain until the state law question is decided.

In its petition, Old Vail pays scant attention to the purpose of ***Pullman*** abstention, even though Old Vail insists that the doctrine should have been applied by the Court of Appeals. The only argument that Old Vail makes about any unsettled issue of state law is the following:

> Old Vail's taking claim does not involve interpretation of an [sic] single legislative enactment. Instead, the taking claim involves the synergistic effects of the County of Riverside specially assessing Old Vail's Property at a commercial rate while the City of Temecula down-zoned the Property from "Commercial" to "Office Professional" use; thereby destroying the Property's economic viability.

Petition at 23-24.

As seen above, Old Vail does not point to any unsettled state statute or regulation that might render adjudication of the takings claim unnecessary. Rather, Old Vail is arguing that the unsettled issue is the application of state law to a particular set of facts. Put another way, Old Vail is arguing that "if I win my state law claim I won't need to pursue my constitutional claim." An unresolved state law

claim, however, does not equate to an unsettled issue of state law under ***Pullman***. *Cf.* ***City of Houston v. Hill***, 482 U.S. 451, 467-68, 107 S. Ct. 2502, 2512-13, 96 L. Ed. 2d 398 (1987) (***Pullman*** abstention improper because the challenged city ordinance was unambiguous); ***Hawaii Housing Auth. v. Midkiff***, 467 U.S. 229, 230, 104 S. Ct. 2321, 2324, 81 L. Ed. 2d 186 (1984) (***Pullman*** abstention improper because the challenged state statute was unambiguous).

III. Pullman Abstention Would Not Be Proper Because Old Vail Has Voluntarily Litigated Its Takings Claim In State Court.

Old Vail's petition also fails to address that in applying ***Pullman***, the Court has held that the right to return to district court after the state law question is decided may be waived:

> [I]f a party freely and without reservation submits his federal claims for decision by the state courts, litigates them there, and has them decided there, then -- whether or not he seeks direct review of the state decision in this Court -- he has elected to forgo his right to return to the District Court.

England v. Louisiana State Bd. of Medical Examiners, 375 U.S. 411, 419, 84 S. Ct. 461, 467, 11 L. Ed. 2d 440 (1964).

Old Vail has run afoul of the ***Engl***
litigating its takings claim to judgment in state co
than reserving the claim for disposition in the dist
action. Having litigated the takings claim in state
without reservation, Old Vail cannot now assert a
Pullman to bring the takings claim back to distri

CONCLUSION

The Court of Appeals properly or
Younger abstention because Old Vail's state cou
implicates important state interests, and Old Vail
its takings claim in that action.

Dated: September 19, 1997.

Respectfully submitted,

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